HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 8403 of 2007

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Between:

G. Nageswar Rao

…Petitioner

And

Assistant Divisional Engineer,
South Central Railway, Dornakal Junction & others

….Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri V. Ramachander Goud

Counsel for the respondents : Smt. Pushpinder Kour

24.04.2007

Per G.S. SINGHVI, CJ

This petition is directed against order dated 08.03.2007 vide which the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') dismissed O.A.No.46 of 2007 filed by the petitioner for quashing memorandum dated 11.12.2006 issued by Assistant Divisional Engineer/Dornakal Junction and Disciplinary Authority (respondent No.1) for holding an enquiry against the petitioner under the Railway Servants (Discipline and Appeal) Rules 1968 (for short, 'the Rules').

The petitioner was appointed in the services of the South Central Railway as Lookout Man in 1984. He was promoted as Khalasi on 1-9-2006. On a complaint lodged by Inspector, Railway Protection Force, Secunderabad, Crime No.45 of 2006 was registered by the Railway Police under Section 3(a) of the Railway Properties (Unauthorized Possession) Act, 1966. The petitioner was one of the accused named in the first information report. It is alleged that he sold out railway material to Sri Rameswar and Sri Vijay Kumar of Sravani Scrap Traders, Secunderabad on the basis of fictitious release order. Soon after registration of the criminal case, the petitioner was placed under suspension and memorandum dated 11-12-2006 was served on him for holding an enquiry under Rule 9 of the Rules.

The petitioner questioned the legality of the charge sheet by filing an application under

Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'), which was registered as O.A.No.46 of 2007. He pleaded that the criminal case and departmental proceedings are founded on the same facts and, therefore, the enquiry proceedings are liable to be set aside.

The Tribunal upheld the objection raised on behalf of the respondents to the maintainability of the application and dismissed the same as premature.

We have heard Shri V. Ramachander Goud, learned counsel for the petitioner, Smt. Pushpinder Kour, learned Standing Counsel for South Central Railway and perused the record. In our opinion, the application filed by the petitioner under Section 19 of the Act could not have been dismissed by the Tribunal as premature because the issue raised by the petitioner did merit detailed examination in the light of the law laid down by the Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.**[1], **State of Rajasthan v. B.K. Meena**[2] and **G.M. Tank v. State of Gujarat**[3].

If the subject matter of the criminal case and departmental enquiry is the same, it is required to be considered whether the defence of the petitioner will be prejudiced by filing reply to the charge sheet. Another issue which needs consideration is whether, keeping in view the facts and circumstances of the case and the law laid down by the Supreme Court, the proceedings of the departmental enquiry should be stayed.

Hence, the writ petition is allowed. The order under challenge is set aside and the matter is remanded to the Tribunal for fresh adjudication of the application filed by the petitioner. The Tribunal shall consider whether the charges on which enquiry is proposed to be held against the petitioner are founded on the same set of allegations which constitute the foundation of the criminal case registered against him and whether holding of parallel proceedings i.e. criminal case and departmental proceedings would prejudice the cause of the petitioner.

As a sequel to disposal of the writ petition, W.P.M.P.No.10782 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

24.04.2007
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[1] (1999) 3 SCC 679

[2] AIR 1997 Supreme Court 13

[3] (2006) 5 SCC 446